



**DEPARTMENT OF JUSTICE**  
**Drug Enforcement Administration**

**Javaid A. Perwaiz, M.D.**  
**DECISION AND ORDER**

On June 1, 2020, the Assistant Administrator, Diversion Control Division, Drug Enforcement Administration (hereinafter, Government), issued an Order to Show Cause (hereinafter, OSC) to Javaid A. Perwaiz, M.D. (hereinafter, Registrant) of Chesapeake, Virginia. OSC, at 1. The OSC proposed the revocation of Registrant's Certificate of Registration No. AP1844287. It alleged that Registrant is without "authority to handle controlled substances in Virginia, the state in which [Registrant is] registered with DEA." *Id.* (citing 21 U.S.C. 823(f) and 824(a)(3)).

Specifically, the OSC alleged that according to the records of the Virginia Department of Health Professionals, Registrant's Virginia Medicine & Surgery license expired on March 31, 2020. OSC, at 2. The OSC further alleged that because Registrant's medical license was expired, Registrant no longer held authority to handle controlled substances in Virginia. *Id.*

The OSC notified Registrant of the right to request a hearing on the allegations or to submit a written statement, while waiving the right to a hearing, the procedures for electing each option, and the consequences for failing to elect either option. *Id.* (citing 21 CFR 1301.43). The OSC also notified Registrant of the opportunity to submit a corrective action plan. OSC, at 3 (citing 21 U.S.C. 824(c)(2)(C)).

**Adequacy of Service**

In a Declaration dated August 5, 2020, a Diversion Investigator (hereinafter, DI) assigned to the Norfolk Resident Office of the Washington Field Division stated that she first attempted service of the OSC by forwarding a copy of the OSC to Registrant's legal counsel via email on June 2, 2020. Request for Final Agency Action (hereinafter RFAA), App. 8 (Declaration of DI), at 2. After nine days with no response, the DI called the office of Registrant's legal counsel and

left a message with his staff regarding the OSC. *Id.* On June 19, 2020, the DI called the office of Registrant’s legal counsel a second time after having still not received a response to the first phone call or the initial email. *Id.* at 3. According to the DI, Registrant’s legal counsel returned the second phone call later that day and “acknowledged receiving a copy of the [OSC]” and “confirmed that [Registrant] had received a copy of the [OSC] (although he could not remember the exact date).” *Id.* Registrant’s legal counsel also said that he “planned on filing a response to the [OSC] on behalf of [Registrant].” *Id.* The DI concluded that, following the phone call on June 19, 2020, neither she nor her office “received any other written correspondence, telephonic communication, or any other communication from [Registrant], or any representative on his behalf in response to the [OSC].” *Id.*

The Government forwarded its RFAA, along with the evidentiary record, to this office on August 6, 2020. In its RFAA, the Government represents that “despite [Registrant’s legal counsel’s] assurances to DEA personnel that a response would filed [sic] in response to the [OSC], more than [thirty days] have passed since Registrant received the [OSC]; however, Registrant has not submitted to DEA a request for hearing.”<sup>1</sup> RFAA, at 2; *see also* RFAA, Apps. 5 and 6. The Government requests that Registrant’s Certificate of Registration be revoked based on Registrant’s lack of state authority to handle controlled substances. RFAA, at 5 and 6.

Based on the DI’s Declaration, the Government’s written representations, and my review of the record, I find that the Government accomplished service of the OSC on Registrant on or before June 19, 2020. I also find that more than thirty days have now passed since the Government accomplished service of the OSC. Further, based on the Government’s written representations, I find that neither Registrant, nor anyone purporting to represent the Registrant, requested a hearing, submitted a written statement while waiving Registrant’s right to a hearing, or submitted a corrective action plan. Accordingly, I find that Registrant has waived the right to

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<sup>1</sup> The Government also represents that Registrant has not “otherwise filed a response with the agency following the issuance of the [OSC].” RFAA, at 2.

a hearing and the right to submit a written statement and corrective action plan. 21 CFR 1301.43(d) and 21 U.S.C. 824(c)(2)(C). I, therefore, issue this Decision and Order based on the record submitted by the Government, which constitutes the entire record before me. 21 CFR 1301.43(e).

## **FINDINGS OF FACT**

### **Registrant's DEA Registration**

Registrant is the holder of DEA Certificate of Registration No. AP1844287 at the registered address of 3003 Churchland Boulevard, Chesapeake, VA 23321. RFAA, App. 1. Pursuant to this registration, Registrant is authorized to dispense controlled substances in schedules II through V as a practitioner. *Id.* Registrant's registration expired on March 31, 2021.<sup>2</sup> *Id.*

### **The Status of Registrant's State License**

According to the records of the Virginia Department of Health Professionals, Registrant's Virginia Medicine & Surgery License expired on March 31, 2020. RFAA, App. 3, at 1. Additionally, Registrant's license remained expired as of the date of the OSC. RFAA, App. 7, at 1.

According to Virginia's online records, of which I take official notice, Registrant's license is still expired.<sup>3</sup> <https://dhp.virginiainteractive.org/lookup> (last visited date of signature

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<sup>2</sup> The fact that a Registrant allows his registration to expire during the pendency of an OSC does not impact my jurisdiction or prerogative under the Controlled Substances Act (hereinafter, CSA) to adjudicate the OSC to finality. *Jeffrey D. Olsen, M.D.*, 84 Fed. Reg. 68,474 (2019).

<sup>3</sup> Under the Administrative Procedure Act, an agency "may take official notice of facts at any stage in a proceeding – even in the final decision." United States Department of Justice, Attorney General's Manual on the Administrative Procedure Act 80 (1947) (Wm. W. Gaunt & Sons, Inc., Reprint 1979). Pursuant to 5 U.S.C. 556(e), "[w]hen an agency decision rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary." Accordingly, Registrant may dispute my finding by filing a properly supported motion for reconsideration of finding of fact within fifteen calendar days of the date of this Order. Any such motion and response shall be filed and served by e-mail to the other party and to Office of the Administrator, Drug Enforcement Administration at [dea.addo.attorneys@dea.usdoj.gov](mailto:dea.addo.attorneys@dea.usdoj.gov).

of this Order). Virginia's online records show that Registrant's medical license remains expired and that Registrant is not authorized in Virginia to practice medicine. *Id.*

Accordingly, I find that Registrant is not currently licensed to engage in the practice of medicine in Virginia, the state in which Registrant is registered with the DEA.

## **DISCUSSION**

Pursuant to 21 U.S.C. 824(a)(3), the Attorney General is authorized to suspend or revoke a registration issued under section 823 of the CSA "upon a finding that the registrant . . . has had his State license or registration suspended . . . [or] revoked . . . by competent State authority and is no longer authorized by State law to engage in the . . . dispensing of controlled substances." With respect to a practitioner, the DEA has also long held that the possession of authority to dispense controlled substances under the laws of the state in which a practitioner engages in professional practice is a fundamental condition for obtaining and maintaining a practitioner's registration. *See, e.g., James L. Hooper, M.D.*, 76 Fed. Reg. 71,371 (2011), *pet. for rev. denied*, 481 F. App'x 826 (4th Cir. 2012); *Frederick Marsh Blanton, M.D.*, 43 Fed. Reg. 27,616, 27,617 (1978).

This rule derives from the text of two provisions of the CSA. First, Congress defined the term "practitioner" to mean "a physician . . . or other person licensed, registered, or otherwise permitted, by . . . the jurisdiction in which he practices . . . , to distribute, dispense, . . . [or] administer . . . a controlled substance in the course of professional practice." 21 U.S.C. 802(21). Second, in setting the requirements for obtaining a practitioner's registration, Congress directed that "[t]he Attorney General shall register practitioners . . . if the applicant is authorized to dispense . . . controlled substances under the laws of the State in which he practices." 21 U.S.C. 823(f). Because Congress has clearly mandated that a practitioner possess state authority in order to be deemed a practitioner under the CSA, the DEA has held repeatedly that revocation of a practitioner's registration is the appropriate sanction whenever he is no longer authorized to dispense controlled substances under the laws of the state in which he practices. *See, e.g., James*

*L. Hooper*, 76 Fed. Reg. at 71,371-72; *Sheran Arden Yeates, M.D.*, 71 Fed. Reg. 39,130, 39,131 (2006); *Dominick A. Ricci, M.D.*, 58 Fed. Reg. 51,104, 51,105 (1993); *Bobby Watts, M.D.*, 53 Fed. Reg. 11,919, 11,920 (1988); *Frederick Marsh Blanton*, 43 Fed. Reg. at 27,617.

Under the Virginia Drug Control Act, a practitioner “shall only prescribe, dispense, or administer controlled substances in good faith for medicinal or therapeutic purposes within the course of his professional practice.” Va. Code 54.1-3408. The Virginia Drug Control Act also defines a “practitioner,” as “a physician . . . licensed, registered, or otherwise permitted to distribute, dispense, prescribe and administer, or conduct research with respect to a controlled substance in the course of professional practice or research in the Commonwealth.” Va. Code 54.1-3401. Further, under Virginia state law, a “physician” is defined as “a person licensed to practice medicine in the Commonwealth of Virginia or in the jurisdiction where the health care is to be rendered or withheld.” Va. Code 54.1-2981; *see also*: Va. Code 54.1-2902 (“It shall be unlawful for any person to practice medicine . . . in the Commonwealth without a valid unrevoked license issued by the Board of Medicine.”).

Here, the undisputed evidence in the record is that Registrant currently lacks authority to practice medicine in Virginia. As already discussed, a physician must be a licensed practitioner to dispense a controlled substance in Virginia. Thus, because Registrant lacks authority to practice medicine in Virginia and, therefore, is not authorized to handle controlled substances in Virginia, Registrant is not eligible to maintain a DEA registration. Accordingly, I will order that Registrant’s DEA registration be revoked.

## **ORDER**

Pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 824(a), I hereby revoke DEA Certificate of Registration No. AP1844287 issued to Javaid A. Perwaiz. Further, pursuant to 28 CFR 0.100(b) and the authority vested in me by 21 U.S.C. 823(f), I hereby deny any pending application of Javaid A. Perwaiz to renew or modify this registration, as well as any other pending application of Javaid A. Perwaiz, for additional registration in Virginia. This Order is effective [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

D. Christopher Evans  
Acting Administrator